

In re National Prescription Opiate Litigation: MDL 2804
Summary Sheet of Concise Issues Raised

Opposition Name: Plaintiffs' Memorandum in Opposition to Distributor Defendants' Motion for Summary Judgment on Plaintiffs' Negligence Per Se Claims

Opposing Parties: Plaintiffs Summit County and Cuyahoga County

Issue 1: Have Plaintiffs established that they are intended beneficiaries of the federal Controlled Substances Act ("CSA")?

Answer: Yes. Defendants assert that the Court's order dismissing the negligence per se claims of the Muscogee (Creek) Nation and The Blackfeet Tribe of the Blackfeet Indian Nation (Dkt. No. 1680) applies with equal force to Plaintiffs. But Ohio counties are not the same as sovereign tribes, and the Court's analysis of the tribal negligence per se claims did not address public entities that, like Plaintiffs, conduct law enforcement activities. Congress expressly stated that one of its primary goals in enacting the CSA was to strengthen law enforcement in order to protect communities from drug abuse. Testimony and documents produced in the course of discovery confirm that Plaintiffs expend considerable resources in investigating and prosecuting drug crimes, including crimes involving prescription opioids. This evidence establishes that Plaintiffs are intended beneficiaries of the CSA by virtue of their efforts to enforce drug laws for the safety of their communities.

Moreover, even assuming the Court were to conclude that Congress did not intend for the CSA to benefit Plaintiffs, evidence of Defendants' statutory and regulatory violations is still admissible in support of Plaintiffs' common law negligence claims. The Ohio Supreme Court declared that such violations may always be used as evidence of negligence, even where the standard for negligence per se is not met. As a result, granting Defendants' motion will not streamline the trial or impact the nature of evidence heard by the jury.

Filing Date: June 28, 2019
Response Date: July 31, 2019
Reply Date: August 16, 2019